



November 1, 1999

Ms. Elaine Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza - 9th Floor
El Paso, Texas 79901

OR99-3055

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129986.

The City of El Paso Police Department (the "department") received a request for case number 99-254086. You indicate that you have released from the incident report the information considered to be "front page" information.¹ You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

First, you assert that the information from the report which you have not released is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the requested information pertains to a pending investigation. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests present in active cases). Accordingly, you may withhold information other than basic information which you assert has already been released. *See Houston Chronicle, Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976);

¹*Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).

Gov't Code § 552.108(c). Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

You additionally claim that certain basic information which you have not released is excepted from disclosure by Government Code section 552.101. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common-law privacy. The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Any information tending to identify the sexual assault victim must be withheld pursuant to common-law privacy. Open Records Decision No. 393 (1983). We have marked the information which you must withhold from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/nc

Ref: ID# 129986

Encl. Submitted documents

cc: Mr. Eduardo Lopez
11100 Vista Lago Pl., #A
El Paso, Texas 79936-5247
(w/o enclosures)